

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GORDA DUNIGAN, as Personal
Representative for the
ESTATE OF JAMES DUNIGAN,
Deceased,

Plaintiff,

vs.

BRONSON METHODIST HOSPITAL,
Defendant.

Case No. 1:16-CV-01324

Hon. Ellen S. Carmody

GORDA DUNIGAN, as Personal
Representative of the ESTATE
OF JAMES DUNIGAN, Deceased,

Plaintiff,

vs.

DEREK NUGENT, et al.,
Defendants.

Case No. 1:16-CV-01324

Hon. Ellen S. Carmody

DEPOSITION OF C. DENNIS SIMPSON, Ed.D.

Taken by the Defendants on the 26th day of February, 2018, at
the offices of O'Brien & Bails, 141 East Michigan, Suite 206,
Kalamazoo, Michigan, at 1:17 p.m.

APPEARANCES:

For the Plaintiff:

MR. JAMES J. HARRINGTON, IV (P65351)
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DEFENDANT'S
EXHIBIT

I

<p style="text-align: right;">Page 26</p> <p>1 the tape.</p> <p>2 Q. What was Mr. Dunigan's baseline as far as ambulation was</p> <p>3 concerned?</p> <p>4 MR. HARRINGTON: I'm sorry. Form and foundation.</p> <p>5 Can you give a little bit better of a timeframe?</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. Before he was in the ambulance and taken to Bronson Hospital,</p> <p>8 what was his baseline?</p> <p>9 A. I have no idea. I know he had a cane.</p> <p>10 Q. You don't know anything beyond that?</p> <p>11 A. I know nothing about that except the cane fell away from him</p> <p>12 and he lost track of it for a while on the video.</p> <p>13 Q. Let's stick with my question. Before he was picked up by the</p> <p>14 ambulance, that day, the day before, the day before that, the</p> <p>15 week before that, what was his baseline as far as ambulation?</p> <p>16 A. I do not know.</p> <p>17 Q. What was his baseline as to balance?</p> <p>18 A. I do not know.</p> <p>19 Q. What was his baseline as to lethargy?</p> <p>20 A. I have no idea.</p> <p>21 Q. What was his baseline as to appearing sedated?</p> <p>22 A. I have no idea.</p> <p>23 Q. When had he last slept?</p> <p>24 A. I do not know. And when you're saying "baseline,"</p> <p>25 you're talking about without any of the drugs in him?</p>	<p style="text-align: right;">Page 28</p> <p>1 But I can tell you the lethal -- the levels of</p> <p>2 drugs in his body are not lethal, or the interactions are not</p> <p>3 lethal, by any means.</p> <p>4 Q. Does it require a medical opinion to determine whether the</p> <p>5 behavior you observed on all the videos was due to drugs,</p> <p>6 underlying medical conditions, purposeful noncooperation?</p> <p>7 A. On the first one, I could opine. It's not the drugs.</p> <p>8 Q. Okay.</p> <p>9 A. That's my field, neuropsychopharmacology. If there's an</p> <p>10 underlying medical condition, there would have to be a</p> <p>11 physician who could either examine said individual or could</p> <p>12 examine detailed records, medical records of said individual</p> <p>13 to make that opinion. On the third --</p> <p>14 Q. You're not that guy?</p> <p>15 A. I'm not. That's what I said.</p> <p>16 Q. That's my question. You're not able to opine --</p> <p>17 A. On the drugs, yes. On the rest of it, no.</p> <p>18 Q. From your observation on the video, what told you that Mr.</p> <p>19 Dunigan was sedated and lethargic as opposed to tired and had</p> <p>20 ambulation deficits?</p> <p>21 A. I assumed he had some ambulation deficits only because he had</p> <p>22 a cane with him and had used it at the initial part of the</p> <p>23 thing. I'm saying what appeared to me on those tapes was to</p> <p>24 be sedation, especially the way he was going up and down and</p> <p>25 up and down into at least stuporous states, if not asleep.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Correct. No, I'm talking about whether drugs were in him or</p> <p>2 not, what he looked like. You don't know anything, do you?</p> <p>3 A. No, I do not. I'm going to keep saying that.</p> <p>4 Q. Okay. Do you know whether if the day before he was at</p> <p>5 Bronson, if he had been in the waiting room and was trying to</p> <p>6 get from chair to chair, he'd look exactly the same as he did</p> <p>7 in the video?</p> <p>8 MR. HARRINGTON: Objection, form, foundation,</p> <p>9 speculation.</p> <p>10 THE WITNESS: Based upon my expertise, I do not</p> <p>11 know. That would require a medical opinion on that. By</p> <p>12 that, I'm saying if he was so affected or unaffected by any</p> <p>13 diseases or disorder he had to so inhibit him in that manner</p> <p>14 would require a medical opinion from someone who has</p> <p>15 expertise well different than mine.</p> <p>16 BY MR. O'LOUGHLIN:</p> <p>17 Q. Your opinion is that the drugs on board in Mr. Dunigan did</p> <p>18 not cause his death?</p> <p>19 A. They are not at lethal levels by any means, that's correct.</p> <p>20 Q. And do you intend to offer an opinion as to what did cause</p> <p>21 his death?</p> <p>22 A. No. And when we back it up, I do not opine in any way of</p> <p>23 cause of death, but I can tell you the drug levels we have</p> <p>24 would not be lethal. Cause of death requires a medical</p> <p>25 personnel signature. I don't do that.</p>	<p style="text-align: right;">Page 29</p> <p>1 His problems with balance, extreme problems with</p> <p>2 balance could not be attenuated just to a cane because he</p> <p>3 fell down many times with the cane. And his lethargy, his</p> <p>4 movements were very gross in movements, especially with arms,</p> <p>5 head, not especially legs.</p> <p>6 So I'm saying that's not -- only thing I can say,</p> <p>7 it's not the drugs doing this. That's all I can say, it's</p> <p>8 not the drugs doing this.</p> <p>9 Q. But you don't know whether he had underlying conditions or</p> <p>10 lack of sleep or pain or renal failure or anything else that</p> <p>11 was causing him to behave as you saw in the video?</p> <p>12 A. No. As I said in "K" there, I can only say it is not the</p> <p>13 drugs or the interaction of the drugs.</p> <p>14 Q. Was it contributed to by the drugs?</p> <p>15 A. Not in a manner which would be observable, no. I'm going</p> <p>16 back to if I put the instruments on you, I could measure</p> <p>17 things in nanoseconds or that, but in an observable fashion,</p> <p>18 no. And I don't know what I'm "contributing" to, but I'm</p> <p>19 back to saying I can only say that it is not the drugs</p> <p>20 producing this observable behavior.</p> <p>21 Q. Or, in your opinion, even contributing to it?</p> <p>22 A. Not contributing to it because of the levels we're talking</p> <p>23 about, no. I am restricting all my opinions to the drugs and</p> <p>24 general behavior to the drugs.</p> <p>25 Q. And your opinion is the drugs were not causing this behavior</p>

<p style="text-align: right;">Page 34</p> <p>1 A. Let me turn this. I did not note it so I don't know if I did 2 or if he was or wasn't.</p> <p>3 Q. Did he appear to be trying to sleep on that bench that he 4 initially moved to from the wheelchair?</p> <p>5 A. He was trying to lay down. He was laying to his side, to the 6 right side.</p> <p>7 Q. Did he appear to sleep at all while he was on that bench?</p> <p>8 A. His head went down, but these were things which were 9 happening all in one-minute blocks. We're talking about 10 4:38, 4:39 to 4:40 something happens, but then he did nod for 11 a while between 4:40 and 4:49 back and forth, but 4:50 he sat 12 up. At 4:51, he fell over to the left side of the chair. 13 4:51 again, in the same minute, he sat up nodding. 4:53, he 14 stands up with the cane. 4:54, he stopped and leaned on the 15 chair, walks, leans over again on another chair. 4:55, 16 walks, two stops with chair, using a chair to support 17 himself, then totally stopped. 4:56, he went down in the 18 chair and leaned over. 4:57, he falls over into the couch. 19 5:04 -- he stayed there for a while. 5:04, he actually fell 20 on to the floor and sits up with the nodding, got up.</p> <p>21 Q. I'm sorry. Let me stop you there. At 5:04 you're saying he 22 fell onto the floor?</p> <p>23 A. Almost falls on the floor, went down on one knee.</p> <p>24 Q. 5:04?</p> <p>25 A. Tape 5:04.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. They do not cause that drowsiness at therapeutic levels of 2 wanting to sleep, they do not cause lethargy at therapeutic 3 levels we're talking about. They only cause things at 4 therapeutic levels which I can measure with instrumentation, 5 not from observation. You're talking about toxic levels.</p> <p>6 Q. In describing what you interpreted to be sedation, lethargy 7 or lack of balance, there were a couple of times where you 8 said Mr. Dunigan couldn't maintain standing and needed to be 9 supported?</p> <p>10 A. Yes.</p> <p>11 Q. How did you decide that he wasn't purposefully not moving? 12 In other words, how did you decide that he simply wasn't 13 laying on the floor and refused to get up?</p> <p>14 A. I did not decide that. I said he couldn't make -- he 15 appeared not to be able to maintain his own balance, his own 16 weight.</p> <p>17 Q. What about whether he could or couldn't get up on his own?</p> <p>18 A. I have no idea. Most of this occurred relative to the 19 police, and the only time it occurred in the waiting room was 20 security lifted him upright and then he fell over toward the 21 floor at 6:20. If it was intentional or not, he did not 22 maintain his own weight at 6:21, and they lifted him, under 23 arms, to the wheelchair. He then slid off the wheelchair at 24 6:21 again. And he was rolled out the door, and then the 25 rest was in the police -- where the police had to lift him</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. On the video?</p> <p>2 A. Yes. All times can we agree are on the video. I wasn't 3 there.</p> <p>4 Q. What was he doing when he, as you put it, almost fell to the 5 floor?</p> <p>6 A. He was moving from one position to another on the far side 7 chairs. And at 5:14 -- and he sat up for the rest of the 8 time until 5:14 nodding, and that's when the police -- police 9 arrived at that time.</p> <p>10 Q. Okay. Let me just ask this. Is there anything about your 11 expertise that allows you to judge what you saw in that video 12 in terms of Mr. Dunigan's level of alertness and/or ability 13 to ambulate, is there anything in your expertise that makes 14 you better able to judge that than the jurors in this case?</p> <p>15 A. Nothing except for my statement that the drugs could not have 16 caused this.</p> <p>17 Q. Okay.</p> <p>18 A. And that's in my expertise.</p> <p>19 Q. But you don't know whether everything you saw Mr. Dunigan do 20 in this video was his normal baseline behavior?</p> <p>21 A. I do not know what his normal baseline behavior was, period, 22 again. The only thing I can say is what I've said about four 23 times, the drugs would not cause this.</p> <p>24 Q. And is that because Gabapentin, Benadryl, and hydrocodone 25 don't cause drowsiness at -- in therapeutic levels?</p>	<p style="text-align: right;">Page 37</p> <p>1 up.</p> <p>2 Q. And you don't know whether any of that was because he was 3 purposefully going limp or not standing or whether it was 4 because he was unable to?</p> <p>5 A. I could not read his mind, no, so I don't know. And again, 6 the only thing I can say is that would not be caused by the 7 drugs.</p> <p>8 Q. You are not in a position to offer any opinion as to whether 9 he, Mr. Dunigan, had an emergency medical condition?</p> <p>10 A. I have no idea. I just know he was brought to the emergency 11 room and they obviously discharged him back out of the 12 emergency room to the waiting room.</p> <p>13 Q. And you are not in a position to criticize any of that 14 decision-making?</p> <p>15 A. I don't even know what the decision-making was so I can't 16 criticize anything, and even if I knew, I could not criticize 17 it.</p> <p>18 Q. Do you know what EMTALA is?</p> <p>19 A. EMTALA?</p> <p>20 Q. E-M-T-A-L-A.</p> <p>21 A. Is that a drug?</p> <p>22 Q. No.</p> <p>23 A. I have no idea what it is. I would have said if you tell me 24 that's a drug, it's going to be new to me.</p> <p>25 Q. You did review the medical records from the emergency</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. What about the cocaine metabolites that were found in the 2 tox. screen?</p> <p>3 A. That's the benzoylecgonine. Benzoylecgonine is not 4 intoxicating. It is called a bright line metabolite which 5 means the only thing it can come from is cocaine 6 hydrochloride. In itself, it is not intoxicating, so at the 7 time of his death, he had no effect at all from the cocaine.</p> <p>8 Q. Okay. Now counsel had asked you something about whether we 9 need an expert such as yourself to give certain types of 10 opinions.</p> <p>11 Do we in fact need your expertise to rule out the 12 drugs being a cause or a contributing factor to Mr. Dunigan's 13 ultimate demise?</p> <p>14 A. Yes, myself or such as -- and I have met him a number of 15 times, Doctor --</p> <p>16 MR. O'LOUGHLIN: Commissaris.</p> <p>17 THE WITNESS: -- Commissaris and are a number of 18 others in the State of Michigan so --</p> <p>19 MR. HARRINGTON: That's all I have. Thank you.</p> <p>20 RE-EXAMINATION</p> <p>21 BY MR. O'LOUGHLIN:</p> <p>22 Q. Do you know when -- do you have any knowledge of when Mr. 23 Dunigan last had dialysis before his death?</p> <p>24 A. There was a statement in the medical records at Bronson that 25 his dialysis was on a cyclic basis, but I'm not sure. It</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Up until that time, you could not make any determination as 2 to whether he was alert and oriented. Correct?</p> <p>3 A. I could not as to that except for the time he was dozing.</p> <p>4 Q. Was he, other than the times he was dozing and when he was 5 interacting with the police officers or security officers, 6 conversant?</p> <p>7 A. His mouth was moving. I don't know what he was saying. I 8 don't know if he could -- if his conversation was normal, 9 abnormal or what is what I'm saying. I could not tell.</p> <p>10 There was no sound.</p> <p>11 Q. From anything you've seen, heard or read, are you aware of 12 whether Mr. Dunigan ever asked for any medical attention 13 after he was discharged from the emergency department?</p> <p>14 A. I'm not aware of anything of that nature. Obviously when 15 they took him back into the ER initially, he was being 16 attended to.</p> <p>17 Q. Right. So we're talking about after he was seen --</p> <p>18 A. After that, I have no idea.</p> <p>19 Q. -- in the ER and after --</p> <p>20 A. I have no idea. Yes or no, I have no idea.</p> <p>21 Q. Do you know of any reason why Mr. Dunigan could not have 22 asked for medical attention if he needed it?</p> <p>23 A. That I don't know. As I said, I had no -- if there had been 24 audio on the videotape, you could tell if his verbal 25 interactions with, Number 1, the security personnel at</p>
<p style="text-align: right;">Page 43</p> <p>1 might be in the records but I did not record it into my 2 notes.</p> <p>3 Q. Do you know when he last ate?</p> <p>4 A. Not to the best of my knowledge, no.</p> <p>5 Q. The Bronson video has no audio. Correct?</p> <p>6 A. No audio.</p> <p>7 Q. So you don't know anything that was being said in the waiting 8 room or outside the hospital until the police car arrived?</p> <p>9 A. I don't know what was said. You could tell there was 10 verbalizations but that was it. Mouths were moving.</p> <p>11 Q. Could you tell from the video whether Mr. Dunigan was having 12 any breathing difficulty in the waiting room or outside the 13 hospital before he got into the police car?</p> <p>14 A. That's well outside my expertise, but it didn't -- he wasn't 15 heaving the chest at any point in time that I saw, but it's 16 outside my expertise if he has breathing difficulties or not.</p> <p>17 Q. Up until the time he got in the police car and other than the 18 times where he appeared to be sleeping, could you make any 19 determination as to whether or not he was alert and oriented?</p> <p>20 A. I don't know if he was alert. You're talking about 21 orientation times three?</p> <p>22 Q. Yes.</p> <p>23 A. I could not make a judgment of that at all. He was placed in 24 the police car. He did not get into it from his own 25 ambulatory nature. He was picked up and put in there.</p>	<p style="text-align: right;">Page 45</p> <p>1 Bronson and the police officers, if that indicated he was 2 cogent or not, but from what I saw, I couldn't tell.</p> <p>3 Q. Do you know what Dr. Commissaris' specialty is?</p> <p>4 A. He's tox. He's a pharmacologist.</p> <p>5 Q. And how does that differ from you?</p> <p>6 A. Pharmacology is the broad range study of drugs. I noticed 7 from his vitae and also I've seen some things, he's been 8 looking recently at some of the things I looked at which is 9 relative to operation of motorized vehicles. He used 10 simulators like I do. But he's a tox. He's a 11 pharmacologist, has been that.</p> <p>12 Neuropsychopharmacology is a very small specialty 13 of those drugs and substances, sometimes called substances, 14 which are psychoactive, psychotropic. And I'm not 15 questioning his credentials at all is what I'm telling you.</p> <p>16 Q. Are you questioning his opinions?</p> <p>17 A. The only one I said was where he said there was a, I can give 18 you that quote again, "might have," whatever that word was. 19 I would never have used that word because I've never seen 20 research which would show that. In science, anything may be 21 possible. But other than that, no. I think that's the 22 bottom of Page 3.</p> <p>23 Q. So in your report when you say, under Subparagraph H, "the 24 interaction of Diphenhydramine," which is Benadryl, "and 25 hydrocodone can also produce dizziness, drowsiness and</p>